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SUITE 2400
AUSTIN TX 78701

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of :
Barrett et al. : DECISION ON APPLICATION
Application No. 10/524,939 : FOR
Filed: March 4, 2008 : PATENT TERM ADJUSTMENT
Docket No. UTSG: 260US/10309693 :
Title: COMPOSITIONS AND METHODS :
RELATED TO FLAVIVIRUS ENVELOPE :
PROTEIN DOMAIN III ANTIGENS :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed June 2, 2010. Applicants request that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected to reflect one period of Office delay.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen, however the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance remains zero days.

On March 2, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 0 days. On June 2, 2010, Applicants timely¹ filed the present application for patent term adjustment. Applicants dispute the Office's failure to accord an adjustment of 66 days pursuant to 37 CFR 1.703(a)(1).

¹ Office records show that the Issue Fee payment was received on June 2, 2010.

The record supports a conclusion that any patent issuing from this patent is not subject to a terminal disclaimer.

37 CFR 1.703(a)(1) states that the term of an original patent shall be adjusted by the failure of the Office to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application.

The application history has been reviewed and it has been determined that Applicants are correct in stating that 66 days of Office delay should have been accorded. Pursuant to the Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 that was mailed on July 18, 2008, this application fulfilled the requirements of 35 U.S.C. 371 in an international application on March 4, 2008. Applicants argue that this application "satisfied all 371(c) requirements²" on October 8, 2007. The Office agrees: the proper date of completion is not March 4, 2008, but rather October 8, 2007. As such, the Office was required to mail either "a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after" October 8, 2007. The Office mailed a restriction requirement fourteen months and 66 days later on February 12, 2009, resulting in 66 days of examination delay.

The adjustment of 0 days has been removed, and an adjustment of 66 days has been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance remains zero days (66 days of Office delay minus 68 days of Applicant delay).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to Applicants approximately three weeks prior to issuance.

² Petition, page 2.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Thursday
Date: 7/29/2010

PALM INTRANET

Time: 14:46:29

PTA Calculations for Application: 10/524939			
Application Filing Date:	03/04/2008	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	68
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	66		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
73	07/29/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	66		
63	03/02/2010	MAIL NOTICE OF ALLOWANCE			
62	02/24/2010	ISSUE REVISION COMPLETED			
61	02/24/2010	DOCUMENT VERIFICATION			
60	02/24/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
59	02/24/2010	CASE DOCKETED TO EXAMINER IN GAU			
58	02/16/2010	EXAMINER'S AMENDMENT COMMUNICATION			
57	02/16/2010	NOTICE OF ALLOWABILITY			
56	10/30/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	12/11/2009	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
52	10/30/2009	REFERENCE CAPTURE ON IDS			
51	10/30/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	11/25/2009	NEW OR ADDITIONAL DRAWING FILED			
49	12/01/2009	DATE FORWARDED TO EXAMINER			
48	11/25/2009	RESPONSE AFTER NON-FINAL ACTION		68	45
47	11/25/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
46	10/30/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	06/18/2009	MAIL NON-FINAL REJECTION			
44	06/18/2009	NON-FINAL REJECTION			
43	04/24/2009	DATE FORWARDED TO EXAMINER			
42	04/13/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
		REQUEST FOR EXTENSION OF TIME - GRANTED			

41	04/13/2009				
40	04/23/2009	FILING RECEIPT - CORRECTED			
39	02/12/2009	MAIL RESTRICTION REQUIREMENT			
38	02/11/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
37	11/29/2008	CASE DOCKETED TO EXAMINER IN GAU			
36	11/23/2008	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
35	11/13/2008	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
34	03/31/2008	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
33	03/04/2008	PRELIMINARY AMENDMENT			
30	10/30/2008	PG-PUB ISSUE NOTIFICATION			
29	08/21/2008	FILING RECEIPT - CORRECTED			
28	08/06/2008	APPLICATION DISPATCHED FROM OIPE			
27	03/04/2008	371 COMPLETION DATE			
26	07/18/2008	SENT TO CLASSIFICATION CONTRACTOR			
25	07/18/2008	FILING RECEIPT			
24	07/18/2008	NOTICE OF DO/EO ACCEPTANCE MAILED			
23	03/04/2008	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
22	03/04/2008	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
21	03/04/2008	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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